

FILED BY CLERK

FEB 25 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2009-0307-PR
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
CRAIG A. ROHLA,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20053979

Honorable Richard Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

Isabel G. Garcia, Pima County Legal Defender
By Robb P. Holmes

Tucson
Attorneys for Petitioner

B R A M M E R, Judge.

¶1 After a jury trial, petitioner Craig Anthony Rohla was convicted of possession of a dangerous drug and possession of drug paraphernalia. Based on Rohla's admissions at trial and related jury findings, the trial court found he had two or more prior felony convictions and sentenced him to enhanced, concurrent terms of

imprisonment, one slightly mitigated and one presumptive, the longer of which was nine years. We affirmed his convictions and sentences on appeal. *State v. Rohla*, No. 2 CA-CR 2006-0275 (memorandum decision filed Sept. 10, 2008).

¶2 Rohla filed a timely notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. In the petition that followed, he maintained the state’s pretrial notice alleging he had historical prior felony convictions had been defective because, for one of the cases identified in the notice, the state had misstated the charges for which Rohla had been convicted. He appeared to argue that, as a result, his enhanced sentence pursuant to A.R.S. § 13-703(C)¹ was illegal. *See* Ariz. R. Civ. P. 32.1(c) (illegal sentence ground for Rule 32 relief).

¶3 Specifically, Rohla asserted the state’s notice of prior felonies, filed in accordance with § 13-703(N), mistakenly alleged he had been convicted of “possession of dangerous drugs and possession/growth/process of marijuana” in Maricopa County Superior Court No. CR99-018438. When asked at trial whether he had been convicted of a felony in Maricopa County No. CR99-018438, Rohla admitted that he had, adding, “I believe that was for marijuana.” With his petition for post-conviction relief, Rohla submitted documents suggesting his conviction in that case had actually been for misconduct involving weapons, a class four felony, with counts of the indictment

¹The Arizona criminal sentencing code has been renumbered, effective “from and after December 31, 2008.” *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120. For ease of reference and because the renumbering included no substantive changes, *see id.* § 119, we refer in this decision to the current section numbers rather than those in effect at the time of the offense in this case.

charging marijuana possession and possession of a dangerous drug dismissed under the terms of a plea agreement. According to Rohla, because the state had “alleged prior convictions [on charges] that had been dismissed[,] . . . they could not be used to enhance [his] sentence” pursuant to § 13-703(C). The trial court summarily denied relief, finding Rohla “had adequate notice of the prior convictions alleged” because he had been convicted in Maricopa County No. CR99-018438 “for a felony which was properly used for enhancement.”

¶4 In his petition for review, Rohla repeats the argument he raised in the trial court, without identifying how the error in the state’s notice caused him to be ““misled, surprised, or deceived in any way”” about the state’s intent to seek an enhanced penalty based on his prior felony convictions, including his conviction in Maricopa County No. CR 99-018438. *State v. Benak*, 199 Ariz. 333, ¶ 16, 18 P.3d 127, 131 (App. 2001) (pre-trial notice of enhancement allegations required to inform defendant of “full range of potential punishment he faces upon conviction”), *quoting State v. Bayliss*, 146 Ariz. 218, 219, 704 P.2d 1363, 1364 (App. 1985); *see also State v. Hodge*, 131 Ariz. 63, 64, 638 P.2d 730, 731 (App. 1981) (notice sufficient when defendant not “misled, surprised or deceived” by allegations or their subsequent amendment).²

²Rohla also alleges, for the first time on review, that the state failed to establish a sufficient factual basis to prove his prior conviction in Maricopa County No. CR 99-018438. We will not address a claim that has not been presented to the trial court. *See, e.g., State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court does not consider issues first presented in petition for review that “have obviously never been presented to the trial court for its consideration”), *see also Ariz. R. Crim. P. 32.9(c)(1)(ii)* (review limited to “issues . . . decided by the trial court.”).

¶5 We review a trial court's denial of post-conviction relief for an abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find none here. Accordingly, the court's summary disposition was not an abuse of discretion. *See* Ariz. R. Crim. P. 32.6(c) (court shall dismiss petition if all claims are precluded).

¶6 For the foregoing reasons, although we grant Rohla's petition for review, we deny relief.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge